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IN THE

Supreme Court of the United States

NIKE, INC., *et al.*,

Petitioners,

v.

MARC KASKY,

Respondent.

On Writ of Certiorari to the Supreme Court of California

BRIEF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), a federation of 65 national and international labor organizations with a total membership of approximately 13 million working men and women, files this brief *amicus curiae* in support of neither party with the consent of the parties as provided for in the Rules of this Court.[1]

[1] No counsel for a party authored this brief *amicus curiae* in whole or in part, and no person or entity, other than the *amicus*, made a monetary contribution to the preparation or submission of this brief.

STATEMENT

Nike, Inc., is one of the largest manufacturers of sporting apparel and equipment in the world. Nike sells most of its goods in the United States and in the other industrialized countries. But the Corporation does not manufacture its goods in these places.

Nike's production strategy is to subcontract the manufacture of its goods to producers in countries with worse labor conditions and less worker freedom to organize independent trade unions than obtain in the industrialized world. Indeed, Nike has *not* been content to manufacture its goods in countries with *low* labor costs. Rather, Nike relentlessly seeks to place its production in locations with the *lowest* labor costs. When workers in countries where Nike has contracted production succeed in improving their labor—and living—conditions, by organizing a union or otherwise, Nike responds by shifting its production to new locations in countries with worse labor conditions.

Critics of Nike's strategy of locating its production in places with poor labor conditions and repressive political regimes have questioned the fairness of that strategy to the workers who produce Nike goods and to the manufacturing workers in other countries who have achieved better labor conditions. And, those critics have questioned the efficacy to the industrialized countries that import Nike goods of a trade in merchandise produced under abject labor conditions. The public debate is concerned, in the first place, with Nike's own production strategy and with its labor practices and, more broadly, with the similar production strategy followed by a myriad of multinational corporations and with their labor practices.

Nike did not initiate this debate, and the Corporation is far from being an enthusiastic participant. To the contrary, at every step of the way Nike has resisted making public statements about the labor conditions at its production facilities. It

is Nike's critics who have insisted that the Corporation speak on these matters, and it is Nike's critics who have brought to bear the pressure of public opinion to secure disclosure by the Corporation of the identities of its subcontractors, the locations of their production facilities and the labor conditions at those facilities.

The AFL-CIO has taken an active part in the debate over Nike's labor practices—with the object of reforming *both* Nike's practices *and* the foreign trade policies of the United States. We are most assuredly on the other side from Nike in that debate. We vigorously assert that Nike is guilty of unfairly exploiting workers in the production of its goods, of undermining employment opportunities and labor standards both in the United States and overseas, and of weakening the economies not only of this country but also of many developing nations that have sought to improve their workforces' labor conditions. And, we further maintain that Nike's public statements in this regard have, in general, been unforthcoming and unresponsive and have been calculated more to mislead than to inform the public.

From all that appears in the complaint, then, the AFL-CIO stands on the same side of the debate over Nike's labor practices as the plaintiff in this case. Where we part company with the plaintiff, however, is that we are certain that this debate is, and in the interest of the disputants and the public should be, an open free speech debate under the First Amendment and not one subject to legal regulation under the commercial speech doctrine.

SUMMARY OF ARGUMENT

In this case, the California Supreme Court held that statements by Nike, Inc. responding to public criticism of the labor conditions at Nike's overseas production facilities con stitute commercial speech entitled to less First Amendment protection than statements on matters of public concern.

The ruling below raises two issues. The first issue is whether a public debate over labor conditions and labor relations constitutes speech on a matter of public concern entitled to full First Amendment protection. The second issue is whether, if public debate over labor conditions and labor relations does constitute speech on a matter of public concern, the speech of the employer whose labor conditions and labor relations are under scrutiny is entitled to less First Amendment protection than the speech of the employer's critics.

We submit that the answer to the first question is "yes" and that the answer to the second question is "no."

With respect to the first issue, this Court in *Thornhill v. Alabama*, 310 U.S. 88 (1940), clearly held that public statements about labor conditions or labor relations do constitute statements about matters of public concern that are entitled to full First Amendment protection. The California Supreme Court recognized as much, but posited that *Thornhill* had been weakened by the development of the commercial speech doctrine. The California court's theory in this regard is that, under the commercial speech precedents, economically motivated speech is entitled to only limited First Amendment protection. This Court squarely rejected that proposition in *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60 (1983) – and for good reason, as much speech that lies at the heart of the First Amendment is economically motivated.

With respect to the second issue, the California Supreme Court advanced a definition of commercial speech that is calculated to disadvantage the employer side in any public debate over labor conditions and labor relations. That definition conflicts with this Court's definition of commercial speech and offends the First Amendment. The First Amendment is intended to foster debate on public issues that is uninhibited, robust and wide-open on all sides not debate in which one side is inhibited by state regulation that does not apply to the other side.

ARGUMENT

"[S]peech on '"matters of public concern"' . . . is 'at the heart of the First Amendment's protection.' *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 776 (1978), citing *Thornhill v. Alabama*, 310 U.S. 88, 101 (1940)." *Dun & Bradstreet, Inc. v. Greenmoss Builders*, 472 U.S. 749, 758-759 (1985). "Accordingly, the Court has frequently reaffirmed that speech on public issues occupies the '"highest rung of the hierarchy of First Amendment values,"' and is entitled to special protection." *Connick v. Myers*, 461 U.S. 138, 145 (1983), citing and quoting *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982), and *Carey v. Brown*, 447 U.S. 455, 467 (1980).

By contrast, "the Constitution accords less protection to commercial speech than to other constitutionally safeguarded forms of expression." *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 64-65 (1983). *See Dun & Bradstreet*, 472 U.S. at 759 ("[S]peech on matters of purely private concern is of less First Amendment concern.").

The California Supreme Court held that Nike's public statements "describing its own labor policies, and the practices and working conditions in factories where its products are made" fall into the less protected category of "commercial speech." Pet. App. 22a. "For purposes of categorizing Nike's speech as commercial or noncommercial," said the California court, "it does not matter that Nike was responding to charges publicly raised by others and was thereby participating in a public debate." *Id.* at 25a. Nor, according to the court below, does it matter to the court below that the charges against Nike in this regard and the Corporation's responses "were part of an international media debate on issues of intense public interest." *Id.* at 23a (internal quotation marks omitted).

Given the First Amendment's "special protection" for "speech on matters of public concern," the California court's ruling raises two issues:

- The first issue is whether "participating in a public debate" over labor conditions and labor relations that are a matter "of intense public interest," Pet. App. 25a & 23a, constitutes "speech on [a] matter[] of public concern."
- If public debate over labor conditions and labor relations does constitute speech on a matter of public concern, the second issue is whether the participation of the employer whose labor conditions and labor relations are under scrutiny is entitled to less First Amendment protection than the speech of the employer's critics.

As we now show, the answer to the first question is clearly "yes," and the answer to the second question is just as clearly "no."

1. More than sixty years ago, this Court squarely held that "the effective exercise of the right to discuss freely industrial relations which are matters of public concern" is fully protected by the First Amendment. *Thornhill v. Alabama*, 310 U.S. 88, 104 (1940).

The *Thornhill* Court stated that "the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution," because "[f]reedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." 310 U.S. at 102. As the Court explained:

> "[S]atisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an importance which is not less than the interests of those in the business or industry directly concerned. The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing. The merest glance at state and federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern." *Id.* at 103.

That being so, the Court concluded that "[f]ree discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society." *Id.*

It follows ineluctably from *Thornhill* that the pure speech "dissemination of information" to the public concerning the dispute over labor conditions at Nike's production facilities is most certainly "within that area of free discussion that is guaranteed by the Constitution." 310 U.S. at 102.[2] *See also Bartnicki v. Vopper*, 532 U.S. 514, 535 (2001) ("negotiations over the proper level of compensation for teachers . . . were unquestionably a matter of public concern" so that the parties "engaged in debate about that concern" were entitled to full "constitutional protection").

It is very much to the point that Nike's production strategy is a paradigm for a whole class of American corporations.

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[2] We phrase the point in terms of "pure speech," because *Thornhill* itself involved union picketing and because *Thornhill*, unlike subsequent cases, treated that activity as pure speech. After *Thornhill*, this Court came to the view that "picketing is indeed a hybrid" of speech and conduct and that "while picketing has an ingredient of communication it cannot dogmatically be equated with the constitutionally protected freedom of speech." *Teamsters Union v. Hanke*, 339 U.S. 470, 474 (1950) (internal quotation marks & citation omitted). That development in the law has not undermined the holding of *Thornhill* with respect to the protected status of pure speech to the public on labor conditions and labor relations. *See* n. 3, pp. 10-11, *infra*.

Over the past decade, for example, upward of 2 million manufacturing jobs have been lost to the United States, in general to countries with worse labor conditions than those prevailing in this nation. *See* Robert E. Scott, *Where the Jobs Aren't*, EPI Issue Brief # 168 (Economic Policy Institute, Oct. 30, 2001). If "the practices in a single factory [can] have economic repercussions upon a whole region and affect widespread systems of marketing," *Thornhill*, 310 U.S. at 103, the wholesale transfer of manufacturing to countries with the lowest labor costs—and the most repressive political regimes—can have repercussions throughout the entire nation and affect both the national and the international systems for producing marketable goods.

That being so, the purpose of the AFL-CIO and of other Nike critics in engaging the Corporation on this issue is not just to reform Nike's labor practices but to encourage reform through widespread employer action and through governmental action to assure that imported goods are produced under fair—rather than exploitative—conditions. In this context, as in the context in which *Thornhill* itself arose, "[f]ree discussion concerning the conditions in industry" in low labor cost countries is "indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society." *Thornhill*, 310 U.S. at 103.

2. The California Supreme Court, after acknowledging that the debate over labor conditions at Nike's production facilities is a matter of "intense public interest," Pet. App. 23a, suggested that *Thornhill* and the related precedent of *Thomas v. Collins*, 323 U.S. 516 (1945), have been sapped of their vitality by the subsequent development of "the modern commercial speech doctrine," Pet. App. 24a.

While the California court did not vouchsafe a full explanation of how the commercial speech doctrine has eroded the First Amendment protection granted to the public discussion

of labor conditions and labor relations, the theory of the court below appears to be that the commercial speech doctrine makes the speaker's "economic motivation" a key determinant of the level of First Amendment protection. Pet. App. 18a. That followed, in the California court's view, from the basis for according commercial speech only limited protection—that "commercial speech is *hardier* than noncommercial speech in the sense that commercial speakers, because they act from a profit motive, are less likely to experience a chilling effect from speech regulation." *Id.* at 12a (emphasis in original). This Court's decisions belie the California court's view.

(a) On the California Supreme Court's view, the commercial speech cases have not merely limited *Thornhill* but entirely overruled that decision. After all, the union picket whose arrest generated the *Thornhill* decision itself had an obvious economic motivation for "disseminat[ing] . . . information concerning the facts of [the] labor dispute," 310 U.S. at 102, in that he was picketing in support of a strike against his employer, *id.* at 93-94. It is indeed difficult to conceive of any labor dispute in which the disputants' public statements could not be characterized as "economically motivated."

For that and a myriad of other reasons, this Court has squarely held that "the fact that [a speaker] has an economic motivation for [speaking] would be clearly insufficient to turn the [message] into commercial speech." *Bolger*, 463 U.S. at 67. *See, e.g., Eastern R. Presidents Conf. v. Noerr Motors Freight, Inc.*, 365 U.S. 127, 139 (1961). And, *DeBartolo Corp. v. Florida Gulf Coast Trades Council*, 485 U.S. 568 (1988), shows that this proposition continues to hold in the context of public speech on labor conditions and labor relations.

DeBartolo involved a "union's peaceful handbilling of the businesses operating in a shopping mall." 485 U.S. at 570.

In response to the use of a non-union contractor by one of the mall's tenants to construct a department store, the union "distribut[ed] handbills asking mall customers not to shop at any of the stores in the mall 'until the Mall's owner publicly promises that all construction at the Mall will be done using contractors who pay their employees fair wages and fringe benefits.'" *Id.* "The handbills' message was that '[t]he payment of substandard wages not only diminishes the working person's ability to purchase with earned, rather than borrowed, dollars, but it also undercuts the wage standard of the entire community.'" *Id.* at 570-571.

The union in *DeBartolo* had an obvious economic motivation for distributing the boycott leaflets. The non-union contractor had displaced a union contractor and thus deprived the union's members work at fair wages. Moreover, the "alleged substandard wages and fringe benefits" provided by the non-union contractor "undercut[] the wage standard of the entire community" and thereby undercut the union's ability to negotiate favorable terms with the contractor's unionized competitors. 485 U.S. at 570-571.

While that was both obvious and true, the *DeBartolo* Court concluded that the leaflets "do not appear to be typical commercial speech such as advertising the price of a product or arguing its merits, for they pressed the benefits of unionism to the community and the dangers of inadequate wages to the economy and the standard of living of the populace." 485 U.S. at 576. *See also Babbitt v. Farm Workers*, 442 U.S. 289, 311 n. 17 (1979) (union "appeals directed against the products of agricultural employers whose employees the labor organization did not actually represent" are protected by the Constitution).[3]

[3]To be sure, the respondent claims that "the speech of labor disputants does *not* receive 'full First Amendment protection.'" Brief in Opp. 23 (emphasis in original). But, as we have shown in text, the precedents on the pure speech of labor disputants addressed to the public—which is what is at issue here—do accord such speech "full First Amendment protection." To the extent that "[t]he speech of labor disputants . . . is subject to a number of restrictions," *Virginia Pharmacy Board v. Virginia Consumer Council*, 425 U.S. 748, 763 n. 17 (1976), what has been restricted is "conduct, though evidenced in part by speech," *NLRB v. Virginia Power Co.*, 314 U.S. 469, 477 (1941). That has been the basis of the restrictions on employer anti-union campaigns addressed to employees. *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969) ("[A]n employer is free to communicate to his employees any of his general views about unionism, so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.'"). And, it is the basis of the restrictions on union picketing. *See Hughes v. Superior Court*, 339 U.S. 460, 465 (1950) ("picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent"). The Court's decisions in this regard rely on the proposition that what is being regulated "is a mixture of conduct and communication" and make clear that "it is the conduct element rather than the particular idea being expressed" that can be regulated. *NLRB v. Retail Store Employees*, 447 U.S. 607, 619 (1980) (Stevens, J., concurring).

By the same token, persons protesting against racially discriminatory hiring practices are animated by just the sort of economic motivations that animated the union in *DeBartolo*. *See, e.g., Talley v. California*, 362 U.S. 60, 61 (1960) (handbills urging "a boycott against certain merchants and businessmen . . . on the ground that . . . they carried products of 'manufacturers who will not offer equal employment opportunities to Negroes, Mexicans, and Orientals"); *New Negro Alliance v. Grocery Co.*, 303 U.S. 552, 557 (1938) (picketing with signs that read "Do your Part! Buy Where You Can Work! No Negroes Employed Here!").

The fact that such protests are economically motivated has not prevented the Court from recognizing that the "right to protest racial discrimination—a matter inherently of public concern" is entitled to full First Amendment protection. *Connick*, 461 U.S. at 148 n. 8. *See, e.g., Claiborne Hardware*, 458 U.S. at 914 ("boycott designed to force governmental and economic change"). *See also NAACP v. Alabama*

ex rel. Patterson, 357 U.S. 449, 460 (1958) ("it is immaterial whether the beliefs sought to be advanced . . . pertain to political, economic, religious, or cultural matters").

(b) The California Supreme Court's fundamental error in classifying Nike's statements on labor conditions as commercial speech was that court's single-minded focus on the speaker's "economic motivation." For this Court has defined commercial speech as "expression related *solely* to the economic interests of the speaker *and* its audience." *Central Hudson v. Public Service Comm'n*, 447 U.S. 557, 561 (1980) (emphasis added).

While public speech on labor conditions and labor relations is often "related . . . to the economic interests of the speaker," it is not in the same sense "related . . . to the economic interests of . . .its audience." *Central Hudson*, 447 U.S. at 561.

Nike's public statements about the labor conditions at its production facilities were undoubtedly made to serve the Corporation's economic interests. But—in contrast to Nike statements on its products and their qualities and supposed virtues—the Nike statements on labor conditions were most certainly *not* addressed to the economic interests of the public as consumers.

Rather, Nike's labor conditions statements were addressed to the public's *moral, social and political interests* as members of a complex industrial society in which they act both as consumers who can reflect their personal moral and social beliefs through their purchasing decisions and as voters who can participate in shaping governmental policy on trade and the regulation of commerce. *See Consolidated Edison Co. v. Public Service Comm'n of New York*, 447 U.S. 530, 534 & n. 2 (1980) ("Freedom of speech is 'indispensable to the discovery and spread of political truth'" and "also protects the individual's interest in self-expression.").

That is *Thornhill*'s point. And, that is why such speech *is* protected as speech on a matter of public concern and *is not* commercial speech.

Contrary to the California Supreme Court's supposition, then, "economic motivation or impact alone cannot make speech less deserving of constitutional protection." *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 494 (1995) (Stevens, J., concurring in judgment).

3. The sum of the matter is that public statements on labor conditions and labor relations exemplify "speech on matters of public concern" and fall "at the heart of the First Amendment's protection." *Dun & Bradstreet*, 472 U.S. at 758-759 (citations and internal quotation marks omitted). The question that remains is whether such statements by an interested employer are, for some reason, entitled to less First Amendment protection than such statements by employees, labor unions or third parties.

The California Supreme Court's holding that Nike's statements are not fully protected rests on the following three part definition of commercial speech:

> "Because in the statements at issue here Nike was acting as a commercial speaker, because its intended audience was primarily the buyers of its products, and because the statements consisted of factual representations about its own business operations, we conclude that the statements were commercial speech for purposes of applying state laws designed to prevent false advertising and other forms of commercial deception." Pet. App. 23a.

The California court made clear that the first two parts of this definition are satisfied whenever an employer addresses the general public. *See* Pet. App. 21a (The term "commercial speaker" covers all "speakers . . . [who] are engaged in commerce," and statements "addressed to the public generally" are considered "intended to reach and influence actual

and potential purchasers."). And, of course, the third step—"factual representations about its own business operations"—will be satisfied whenever the employer is speaking about labor conditions at its own facilities or, as here, at the facilities of the employer's subcontractors.

In the context of a public debate over labor conditions or labor relations, then, the California Supreme Court's definition of commercial speech opens the way to the regulation of one disputant's speech that does not apply to the other disputants. As one of the unregulated disputants, we recognize that this is one-sided and thus patently unfair. And, we recognize as well that, in something of an irony, such regulation can be counterproductive for our own side. In the first place, unbalanced regulation is inherently unstable in that it creates a dynamic—or serves as an excuse—for "more equal" regulation of all the disputants. Moreover, as we explain more fully below, such regulation can have the counterproductive effect of stifling the debate itself.

But be those possibilities as they may, the critical legal point is that such unbalanced regulation in its own terms is anathema to the most basic First Amendment free speech principles. *See First National Bank of Boston v. Bellotti*, 435 U.S. 765, 785-786 (1978)(Where a legal rule is so one-sided as to "suggest an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended.").

The First Amendment represents "a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open." *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). This commitment reflects our nation's "confidence in the power of free and fearless reasoning and communication" and our belief that "falsehood may be [best] exposed through the processes of education and discussion." *Thornhill*, 310 U.S. at 95. Only such unfettered public debate allows "the people . . . [to]

judg[e] and evaluat[e] the relative merits of [the] conflicting arguments." *Bellotti*, 435 U.S. at 791. *See Consolidated Edison*, 447 U.S. at 534.

These central First Amendment principles leave no room for legal regulation that inhibits the freedom of speech of one of the disputants in a public debate. And, that is true whether the disfavored speaker is an individual, a union, or a business corporation. "The identity of the speaker is not decisive in determining whether speech is protected." *Pacific Gas & Electric Co. v. Public Utility Comm'n*, 475 U.S. 1, 8 (1986). For just that reason, "a company" that otherwise engages in commercial speech "has the full panoply of protections available to its direct comments on public issues." *Bolger*, 463 U.S. at 68. *See Consolidated Edison*, 447 U.S. at 533. And, this principle applies to a company's "direct comments" to the public on labor conditions and labor relations to the same degree as to statements on other "public issues."

4. We would conclude by adding a word on the nature of the public debate between Nike's labor critics and the Corporation and on the likely effect on that debate of the California Supreme Court's decision—a word that illustrates the practical wisdom embodied in the First Amendment.

The California Supreme Court's aim, as that court stated it, is to "make Nike [a] more cautious"—i.e., a more responsible and accurate—speaker on the subject of the labor conditions at the Nike production facilities. Pet. App. 22a. *But see Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974) (Requiring a speaker "to guarantee the accuracy of his factual assertions may lead to intolerable self-censorship.").

The California court, however, has no power to require Nike to speak on this subject at all. And, citing concerns about legal liability under the California court's decision, Nike has announced that the Corporation will discontinue its recently adopted practice of issuing reports on labor conditions at its production facilities. Nike Press Release of

Oct. 14, 2002, available at www.nike.com/nikebiz/news/pressrelease. Given the dynamics of the debate between Nike's critics and Nike, that step would go well beyond silencing one side toward silencing any meaningful debate.

Nike's production facilities are not located in the United States but in multiple countries throughout the developing world. Indeed, in its relentless search for the lowest labor costs, Nike constantly moves the production of its goods from one subcontractor and one country to another. A first key step in the campaign to expose and improve the labor conditions at the Nike production facilities was, therefore, to mobilize public pressure on the Corporation to identify its subcontractors and the locations of their facilities. After much time and effort, this public pressure finally brought Nike to disclose the names of the subcontractors and the locations of the production facilities involved in manufacturing Nike's prominent line of collegiate athletic apparel.

Another key step in the campaign was to mobilize public pressure on Nike to take public responsibility for the labor conditions at its production facilities. Responding to that public pressure and in order to "foster the appearance . . . of good working conditions in the Asian factories producing its products," Nike: (i) began requiring its contractors "to sign a Memorandum of Understanding that, in general, commits them to comply with local laws regarding minimum wage, overtime, child labor, holidays and vacations, insurance benefits, working conditions, and other similar matters and to maintain records documenting their compliance;" and, (ii) "[t]o assure compliance, the company [began] conduct[ing] spot audits of labor and environmental conditions by accounting firms." Pet. App. 67a.

Nike's commitment to certain labor standards and the Corporation's own reports on subcontractor compliance with those standards have served to focus the public debate on the Corporation's labor standards.

For example, Nike commissioned a report by former United Nations Ambassador Andrew Young on the labor conditions at Nike production facilities. Pet. App. 67a. Ambassador Young toured 12 factories and, in June 1997 issued a report on the labor conditions in those factories. Complaint Exh. EE.[4] Nike publicized the report widely. *Id.* Exhs. Y & FF. In response, various organizations issued detailed criticisms and point-by-point refutations of that report. *Id.* Exhs. C & GG. And, these criticisms of the report were, in turn, reported in the popular press. *Id.* Exh. HH.

In short, in the continuing debate on Nike's labor standards, the Corporation's public statements are not the only word or the last word but rather are part of a continuing dialogue, and, indeed, serve as a catalyst for that dialogue. Nike's withdrawal under legal pressure from the dialogue about the labor conditions at its production facilities serves both to diminish the sources of public knowledge about that matter and to frustrate the debate itself.

CONCLUSION

The decision of the court below should be reversed.

Respectfully submitted,

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[4] The First Amended Complaint and the attached exhibits are contained in Petitioner's Lodging filed along with the Petition for a Writ *Certiorari*.